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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 ASBESTOS DISEASE AWARENESS
13 ORGANIZATION, et al.,

14 *Plaintiffs,*

15 v.

16 U.S. ENVIRONMENTAL PROTECTION
17 AGENCY, et al.,

18 *Defendants.*

Case No. 3:19-CV-00871-EMC

19 **STIPULATION AND ~~[PROPOSED]~~**
20 **ORDER REGARDING EPA'S**
21 **MOTION TO ALTER OR AMEND**
22 **JUDGMENT UNDER RULE 59 OR**
23 **FOR RELIEF UNDER RULE 60**

24 STATE OF CALIFORNIA, by and through
25 Attorney General Rob Bonta, et al.,

26 *Plaintiffs,*

27 v.

28 U.S. ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Defendants.

Case No. 3:19-CV-03807-EMC

1 WHEREAS, on February 19, 2019, Asbestos Disease Awareness Organization, American
 2 Public Health Association, Center for Environmental Health, Environmental Working Group,
 3 Environmental Health Strategy Center, and Safer Chemicals Healthy Families (“ADAO
 4 Plaintiffs”) filed an amended complaint in the U.S. District Court for the Northern District of
 5 California against Andrew Wheeler, as Acting Administrator of the United States Environmental
 6 Protection Agency, and the United States Environmental Protection Agency (collectively,
 7 “EPA”) for declaratory and injunctive relief captioned *Asbestos Disease Awareness*
 8 *Organization v. EPA*, No. 19-CV-00871 (“ADAO Case”);

9 WHEREAS, on June 28, 2019, the State of California, by and through then Attorney
 10 General Xavier Becerra, the Commonwealth of Massachusetts, by and through Attorney General
 11 Maura Healey, and the States of Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey,
 12 Oregon, Washington, and the District of Columbia (“AGs,” together with the ADAO Plaintiffs,
 13 “Plaintiffs”) filed a complaint in the U.S. District Court for the Northern District of California
 14 against EPA for declaratory and injunctive relief captioned *State of California v. EPA*, No. 19-
 15 CV-03807 (“AGs’ Case”);

16 WHEREAS, the above-referenced cases were consolidated per a stipulated order
 17 (“Consolidated Cases”);

18 WHEREAS, in the Consolidated Cases, the Court construed Plaintiffs’ administrative
 19 petitions brought under section 21(a) of the Toxic Substances Control Act (“TSCA”) as seeking
 20 amendments to the Chemical Data Reporting (“CDR”) rule to require additional reporting on
 21 asbestos and asbestos-containing products;

22 WHEREAS, on December 22, 2020, after full briefing and oral argument, the Court
 23 issued an opinion granting summary judgment to Plaintiffs and denying summary judgment to
 24 EPA (“Summary Judgment Order”);

25 WHEREAS, the Summary Judgement Order directed EPA to “amend its CDR reporting
 26 rule pursuant to its authority under 15 U.S.C. § 2607(a)(1)(A) (i.e., under Section 8(a) of TSCA),
 27
 28

1 to address the information-gathering deficiencies identified herein” (Summary Judgment Order
2 35);

3 WHEREAS, on January 5, 2021, the Court entered judgment pursuant to Federal Rule of
4 Civil Procedure 58 in favor of Plaintiffs (“Judgment”);

5 WHEREAS, on February 2, 2021, EPA filed a Motion to Alter or Amend Judgment
6 Under Rule 59 or For Relief Under Rule 60 (“EPA’s Motion,” ADAO Case ECF No. 62; AGs’
7 Case ECF No. 74);

8 WHEREAS, EPA’s Motion asked the Court to alter or modify the Judgment or otherwise
9 grant relief consistent with the remedy available under section 706(2) of the Administrative
10 Procedure Act (“APA”) by, among other things, vacating a specific instruction that EPA amend
11 the CDR rule;

12 WHEREAS, Plaintiffs opposed EPA’s Motion (ADAO Case ECF No. 67; AGs’ Case
13 ECF No. 79) on the grounds that the remedy ordered by the Court was authorized under section
14 21(b)(4)(A) of TSCA and section 706(1) of the APA;

15 WHEREAS, the parties to the ADAO Case and the AGs’ Case agree that section
16 21(b)(4)(A) of TSCA authorizes the Court to direct EPA “to initiate a rulemaking proceeding as
17 requested in the petition”;

18 WHEREAS, the parties to the ADAO Case and the AGs’ Case also agree that where a
19 petition under TSCA section 21(a) seeks amendment of an existing rule, denial of the petition is
20 judicially reviewable under section 21(b)(4)(A) subject to the scope and standard of review
21 provided in section 706(2) of the APA;

22 WHEREAS, pursuant to Rule 15(b) of the FRCP, the ADAO Plaintiffs and the AGs have
23 moved for leave to file amended complaints expressly stating such causes of action under TSCA
24 section 21(b)(4)(A) and removing their causes of action under the APA;

25 WHEREAS, EPA does not oppose such motions for leave to file amended complaints; and

26 WHEREAS, the parties have entered into the attached Settlement Agreement under which
27 EPA has agreed to initiate a rulemaking proceeding to require reporting under TSCA section 8(a)
28

on asbestos in a manner that addresses the information-gathering deficiencies identified in the Court's Summary Judgment Order;

WHEREAS, the parties agree not to appeal or otherwise seek modification of the January 5, 2021 Judgment in this case if this Stipulation and Order is approved by the Court.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the parties to the ADAO Case and the AGs' Case, that:

1. Plaintiffs' unopposed motions to amend their complaints are granted;
2. The Court's instruction on page 35 of the December 22, 2020 Summary Judgment Order, that EPA "amend its CDR reporting rule pursuant to its authority under 15 U.S.C. § 2607(a)(1)(A) (*i.e.*, under Section 8(a) of TSCA), to address the information-gathering deficiencies identified therein" is **VACATED**;
3. The Court's December 22, 2020 Summary Judgment Order is **AMENDED** to read as follows: "The EPA is directed to initiate a rulemaking proceeding to require reporting on asbestos under 15 U.S.C. § 2607(a)(1)(A) (*i.e.*, under Section 8(a) of TSCA) that addresses the information-gathering deficiencies identified herein";
4. The Court **DENIES AS MOOT and DISMISSES WITH PREJUDICE** EPA's Motion to Alter or Amend Judgment Under Rule 59 or For Relief Under Rule 60 (ADAO Case ECF No. 62 and AGs' Case ECF No. 74); and
5. The Court retains jurisdiction for purposes of ensuring compliance with its Orders.

Respectfully submitted,

Dated: June 7, 2021

/s/ Robert M. Sussman (with permission)

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Attorney for ADAO Plaintiffs

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Attorneys for State of California

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22 *Attorneys for Defendants*

23 * * *

24 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

25 DATED: June 7, 2021

26 
27 Edward M. Chen
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2021, a true and correct copy of the foregoing Stipulation and [Proposed] Order Regarding EPA's Motion to Alter or Amend Judgment Under Rule 59 or For Relief Under Rule 60 was filed electronically with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Brandon N. Adkins
Brandon N. Adkins
United States Department of Justice

SETTLEMENT AGREEMENT

WHEREAS, on February 19, 2019, Asbestos Disease Awareness Organization, American Public Health Association, Center for Environmental Health, Environmental Working Group, Environmental Health Strategy Center, and Safer Chemicals Healthy Families (“ADAO Plaintiffs”) filed an amended complaint in the U.S. District Court for the Northern District of California against Andrew Wheeler, as Acting Administrator of the United States Environmental Protection Agency, and the United States Environmental Protection Agency (collectively, “EPA”) for declaratory and injunctive relief captioned *Asbestos Disease Awareness Organization v. EPA*, No. 19-CV-00871;

WHEREAS, on June 28, 2019, the State of California, by and through then Attorney General Xavier Becerra, the Commonwealth of Massachusetts, by and through Attorney General Maura Healey, and the States of Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey, Oregon, Washington, and the District of Columbia (together with the ADAO Plaintiffs, “Plaintiffs”) filed a complaint in the U.S. District Court for the Northern District of California against EPA for declaratory and injunctive relief captioned *State of California v. EPA*, No. 19-CV-03807;

WHEREAS, the above-referenced cases were consolidated per a stipulated order (“Consolidated Cases”);

WHEREAS, in the Consolidated Cases, Plaintiffs sought judicial review of EPA’s decisions to deny Plaintiffs’ administrative petitions brought under section 21(a) of the Toxic Substances Control Act (“TSCA”) seeking amendments to the Chemical Data Reporting (“CDR”) rule requiring reporting on asbestos and asbestos-containing products;

WHEREAS, on December 22, 2020, after full briefing and oral argument, the Court issued an opinion granting summary judgment to Plaintiffs and denying summary judgment to EPA (“Summary Judgment Order”);

WHEREAS, the Order directed EPA to “amend its CDR reporting rule pursuant to its authority under 15 U.S.C. § 2607(a)(1)(A) (i.e., under Section 8(a) of TSCA), to address the information-gathering deficiencies identified herein” (Order 35);

WHEREAS, on January 5, 2021, the Court entered judgment pursuant to Federal Rule of Civil Procedure 58 in favor of Plaintiffs (“Judgment”);

WHEREAS, on January 28, 2021, Plaintiffs wrote to counsel for EPA to request that EPA commit to a schedule by which it would propose and finalize a rulemaking to amend the CDR rule;

WHEREAS, on February 2, 2021, EPA filed a Motion to Alter or Amend Judgment Under Rule 59 or For Relief Under Rule 60 (“EPA’s Motion,” ADAO Case ECF No. 62; AGs’ Case ECF No. 74);

WHEREAS, EPA’s Motion asked the Court to alter or modify the Judgment or otherwise grant relief consistent with the remedy available under section 706(2) of the Administrative Procedure Act (APA) by, among other things, deleting a specific instruction to amend the CDR rule;

WHEREAS, Plaintiffs opposed EPA’s Motion (ADAO Case ECF No. 67; AGs’ Case ECF No. 79) on the grounds that the remedy ordered by the Court was authorized under section 21(b)(4)(A) of TSCA and section 706(1) of the APA;

WHEREAS, the parties wish to resolve by settlement all outstanding issues in this case, including compliance with the Court’s Summary Judgment Order and the issues raised in EPA’s Motion;

WHEREAS, the parties, by entering into this Settlement Agreement, do not waive or limit any claim or defense, on any grounds, related to any final EPA action;

NOW, THEREFORE, it is agreed:

1. Within 3 days of signing this Settlement Agreement, the parties will file the attached Stipulation and [Proposed] Order Regarding EPA’s Motion to Alter or Amend Judgment Under Rule 59 or For Relief Under Rule 60 (“Proposed Stipulation”) in the Consolidated Cases.

2. Concurrently, Plaintiffs will move under Rule 15(b) of the Federal Rules of Civil Procedure for leave to file amended complaints in accordance with the Proposed Stipulation.

3. Defendants agree not to oppose Plaintiffs’ motion for leave to file amended complaints.

4. This Settlement Agreement is conditioned on the Court approving and signing the Proposed Stipulation without modification and granting the motion for leave to file amended complaints. If the Court does not approve and sign the Proposed Stipulation without modification and grant the motion for leave to file amended complaints within thirty days of filing, the parties

agree that this Settlement Agreement is null and void. Nothing contained in this Settlement Agreement or the settlement discussions that led to this Settlement Agreement will be offered or used in any litigation involving the parties.

5. Pursuant to section 8(a) of TSCA, EPA shall sign for publication in the Federal Register:

a. No later than nine months from the effective date of this agreement, a notice of EPA's proposed action to promulgate a rule pursuant to TSCA section 8(a), 15 U.S.C. § 2607(a), for the maintenance of records and submission to EPA of reports by manufacturers, importers and processors of asbestos and mixtures and articles containing asbestos (including as an impurity) that address the information-gathering deficiencies identified in the Court's Summary Judgment Order; and

b. No later than eighteen months from the effective date of agreement, a notice of EPA's final action regarding the proposed TSCA section 8(a) rule.

6. Within 15 business days after taking each action required in Paragraph 5, EPA shall send notice of such action to the Office of the Federal Register for review and publication.

7. If EPA determines that it cannot meet the deadlines in Paragraph 5 or anticipates any delay to the times specified therein, EPA shall notify Plaintiffs in writing, including the cause for delay, a description of its progress in carrying out the rulemaking proceeding, and the length of time the agency anticipates for the delay.

8. The parties may agree to extend any deadlines contained in this Settlement Agreement by mutual written consent.

9. If EPA fails to take action as set forth in Paragraph 5, Plaintiffs' sole remedy under this Settlement Agreement shall be to move for compliance with the Summary Judgment Order, as modified by the Proposed Stipulation, in the Consolidated Cases. EPA does not waive or limit any defense relating to litigating its compliance or lack of compliance with the Summary Judgment Order except that it will not challenge the Court's Summary Judgment Order as modified by the Proposed Stipulation. The parties agree that contempt of court is not an available remedy under this Settlement Agreement.

10. Nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA by TSCA, the Administrative Procedure Act, or by general principles of administrative law, including the discretion to alter, amend or revise any responses and/or

actions contemplated by this Settlement Agreement. EPA's obligation to take the actions set forth in Paragraph 5 by the times specified therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

11. Any obligations of the United States to expend funds under this Settlement Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

12. The effective date of this Settlement Agreement will be the date on which it has been executed by counsel for all Plaintiffs and EPA. The Settlement Agreement may be executed in multiple original counterparts, each of which shall be deemed to constitute one Settlement Agreement. The execution of one counterpart by any of the Plaintiffs or EPA shall have the same force and effect as if that party had signed the other counterpart.

13. The undersigned representatives of the parties certify that they are fully authorized by the party they represent to enter into and execute the terms and conditions of this Settlement Agreement.

SO AGREED:

FOR THE ADAO PLAINTIFFS:

Dated: June 7, 2021

A handwritten signature in black ink, reading "Robert M. Sussman", is written over a horizontal line.

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A handwritten signature in cursive script, reading "Megan K. Hey", is written over a horizontal line.

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Dated: June 7, 2021

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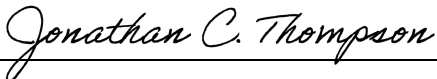
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Dated: June 7, 2021



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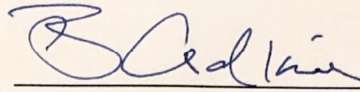
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